No. 411

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

GEORGE SAM MAGIN,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

Petitioner prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled cause on June 10, 1960.

I.

OPINION BELOW.

The opinion of the Court of Appeals has not yet been reported.

The opinion is set forth as an appendix hereto, p. 43.

II.

GROUND OF JURISDICTION OF THIS COURT.

The date of the judgment of the Court of Appeals sought to be reviewed is June 10, 1960.

A timely petition for rehearing was filed by the petitioner, and was denied by the Court of Appeals July 25, 1960.

An order of August 18, 1960, by Mr. Justice Clark; extended to September 13, 1960, the time for filing this petition for certiorari.

The statute believed to confer on this Court jurisdiction to review the judgment by writ of certiorari is § 1254 (1), Tit. 28, U. S. C.

III.

QUESTIONS PRESENTED FOR REVIEW.

Petitioner stands convicted of a violation of § 1621, Tit. 18, U. S. C., for allegedly testifying falsely before a grand jury. The following basic questions involve the denial of petitioner's constitutional rights to confrontation of witnesses, compulsory process for obtaining witnesses, due

process of law in judicial proceedings, and refusal by the court to conform to the decisions of this Court and the decisions of other Courts of Appeals with respect to proof and instructions.

1. Does the "two-witness rule," as stated in Weiler v. U. S., 323 U. S. 606, apply as to the quantum of proof necessary to sustain a finding of knowledge on the part of the defendant in contradiction to his utterance under oath —the element specifically required under the terms of the statute,—or does it apply only as to the quantum of proof necessary to sustain a finding of objective disparity between fact and utterance—an element not required to be proved under the terms of the statute?

2. May the trial court decline to instruct the jury in the language approved in Weiler v. U. S., 323 U. S. 606, in respect of the "two witness rule," and instead substitute other terminology which would authorize conviction if there was testimony by two witnesses on any issue, regardless of the independence of such witnesses?

3. May a conviction stand when there is no evidence in the record of any act, omission or assertion by the accused from which knowledge contrary to his utterance under oath may be inferred (as required by American Communications Association v. Douds, 339 U. S. 382, and U. S. v. Remington, 191 F. 2d 246), and where the jury has been instructed specifically that direct evidence of knowledge is not necessary and that the jury may deduce and find the fact of such knowledge circumstantially from all the evidence in the case?

4. May the trial court, contrary to the guaranty of compulsory service of process incorporated in the Sixth Amendment to the Constitution, forbid the defendant to subpoena the grand jurors and their attending United States attorneys, even though they are eyewitnesses to the